



IN THE MATTER OF:)		
)		
JULIE LEESMAN,)		
)		
Complainant,)		
)		
and)	CHARGE NO:	1995SF0503
)	EEOC NO:	21B91012
STATE OF ILLINOIS, DEPARTMENT)	ALS NO:	S-9179
OF CORRECTIONS, LINCOLN)		
CORRECTIONAL CENTER,)		
)		
Respondent.)		

This matter comes to me on Respondent's Motion to Reconsider and further requests that this case be dismissed with prejudice on the basis of *res judicata*. Complainant was served with the Motion to Reconsider, but she did not file a response. Accordingly, this matter is ready for a decision.

Respondent contends this case should be dismissed because the parallel federal case was dismissed by the Seventh Circuit U.S. Court of Appeals for want of prosecution. Complainant's position is not known because she failed to file a response.

The following findings were derived from the record:

1. On January 19, 1995, Complainant filed a charge of discrimination with the Illinois Department of Human Rights. The charge alleged that Complainant was discriminated against in violation of state and federal law and indicated that the charge was also cross-filed with the Equal Employment Opportunity Commission.

2. On December 15, 1995, Complainant filed a Complaint on her own behalf with the Commission alleging Respondent discriminated against her because of her race (white) and gender. The complaint also alleged sexual harassment and retaliation in the workplace in violation of the Illinois Human Rights Act. The complaint was amended on September 23, 1996.
3. On June 4, 1998, Administrative Law Judge Carol Kirbach stayed this matter on the parties agreed motion to stay this proceeding because the motion indicated that Complainant intended to file a complaint in federal court.
4. On December 31, 1998, Complainant filed a complaint in federal court which the parties agreed was parallel to the complaint filed in this matter.
6. On October 15, 2001, the federal court granted Respondent's motion for a directed verdict and on October 18, 2001, Complainant appealed the decision to the U.S. Court of Appeals for the Seventh Circuit.
7. Complainant then filed a motion for a new trial, which the federal district court denied on January 15, 2002.
8. On January 31, 2002, Complainant filed a second appeal with the U.S. Court of Appeals for the Seventh Circuit and on November 1, 2002, the U.S. Court of Appeals dismissed the case for want of prosecution.
9. On August 7, 2003, Respondent filed a status report and moved to dismiss this case because the parallel case was completed in the federal system.
10. Respondent's motion was denied because I found that it conflicted with another status report filed by Respondent which indicated that the matter was still pending with the federal courts.
11. On October 1, 2003, Respondent filed a motion to reconsider indicating the "conflicting" report was actually filed in August of 2002 not 2003 and further attached the federal court Order dismissing the parallel action.

12. Complainant failed to respond to the motion.

Conclusions of Law

1. The Illinois Human Rights Commission has jurisdiction over the parties and the subject matter in this case.
2. Complainant is an "employee" as defined by the Illinois Human Rights Act. **775 ILCS 5/2-101(A)(1)(a).**
3. Respondent is an "employer" as defined by the Illinois Human Rights Act. **775 ILCS 5/2-101(B)(1)(a).**
4. The doctrine of *res judicata* bars re-litigation of a case where a court of competent jurisdiction has issued a final decision on the merits of the case.
5. The directed verdict issued by the U.S. District Court constituted a decision on the merits of this case by a court of competent jurisdiction.
6. All three elements of *res judicata* have been met in this case, and the case is barred from being re-litigated in front of the Commission.

Determination

This case is barred from proceeding in front of the Illinois Human Rights Commission by the doctrine of *res judicata* and should now be dismissed with prejudice.

Discussion

In order to apply the doctrine of *res judicata* in this case, three elements must be satisfied. First, there must be a common identity of the parties or their privies. Second, there must be a common identity of the cause of action; and third, there must be a final judgment on the merits rendered by a court of competent jurisdiction. ***Schilhavy and Board of Governors of State Colleges and Universities***, ___ Ill. HRC. Rep ___, (1992SF0474, August 22, 2002). All three elements of *res judicata* are present here.

It is undisputed in the record that both the parties and the issues are identical in the federal action and the instant case. Further, there is no question that a directed verdict after

a jury trial was a final judgment on the merits of the parallel federal case because it was dismissed by the federal appellate court, thus rendering the district court's decision as final.

In summary, the entry of a directed verdict against Complainant does not entitle her to now breathe life back into the claim and proceed in front of the Commission. Complainant voluntarily chose to try her claims to a jury in the federal district court and must now accept the consequences of that decision.

Recommendation

Based on the above findings of fact and conclusions of law, I recommend that the Illinois Human Rights Commission dismiss with prejudice the instant complaint together with the underlying charge of discrimination.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB
Administrative Law Judge
Illinois Human Rights Commission

ENTERED THE 29TH DAY OF MARCH, 2004.